

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Dominic Colosimo,
Petitioner-Appellant,

v.

Polk County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 09-77-1137
Parcel No. 010/3974-052-000

On January 14, 2010, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioner-Appellant, Dominic Colosimo, requested a hearing and submitted evidence in support of his petition. He was represented by his spouse, Renee Colosimo, at the hearing. The Board of Review designated Assistant County Attorney, David W. Hibbard, as its legal representative. It also submitted documentary evidence in support of its decision. The Appeal Board now having examined the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

Dominic Colosimo, owner of property located at 4211 Parklawn Drive, Des Moines, Iowa, appeals from the Polk County Board of Review decision reassessing his property. According to the property record card, the subject property consists of a split-foyer frame dwelling having 1820 total square feet of living area, a full 1296 square-foot basement with 500 square feet of finished area, and an attached two-car garage. The main dwelling was built in 1968, and has a 4+5 quality grade. The dwelling is situated on a 0.273 acre site.

The real estate was classified as residential on the initial assessment of January 1, 2009, and valued at \$185,300, representing \$26,200 in land value and \$159,100 in improvement value.

Colosimo protested to the Board of Review on the ground the assessment was not equitable as compared with assessments of other like property in the taxing district under Iowa Code section 441.37(1)(a). He claimed that \$151,000; allocated \$26,000 to land and \$125,000 to the dwelling was the actual value and a fair assessment of the property. The Board of Review granted the protest. The assessed value was changed to \$178,800, allocated \$26,200 to land value and \$152,600 to dwelling value. Although the ground that the property was assessed for more than authorized by law under section 441.37(1)(b) was not listed on Colosimo's protest form, it appears that this ground was considered and relied upon by the Board of Review since the certified record contained market sales analysis and the protest was granted because, "the assessed value of this property was changed because the market data did not support the assessment."

Colosimo filed his appeal with this Board and marked the grounds of error in the assessment under section 441.37(1)(d) and downward change in value under 441.37(1) and its reference to section 441.35(3) on his petition. However his plain statement of claim makes it clear that he believed the property was over-assessed under section 441.37(1)(b). The Board of Review stipulated to this ground being considered at hearing.

Mrs. Colosimo testified the dwelling was in poor repair, the shower could not be used, the bathroom was contaminated with mold, the garage ceiling had open holes from improperly installed insulation, and the kitchen floor sloped. Mr. Colosimo testified the driveway also needed to be redone and the roof needed repairs. Although Mrs. Colosimo testified the dwelling was worth about \$156,000 and the petition stated it was not worth more than \$125,000; both of the Colosimos acknowledged at hearing that a total the appraised value of \$165,000 would be acceptable.

Robbie Adamson of Adamson Appraisal, LLC, in Des Moines completed an appraisal of the property and testified on behalf of the Board of Review. She is a certified appraiser with twenty-three years of experience and appraises exclusively one- to four-family homes. Adamson inspected the

interior and exterior of the property and testified that she is familiar with Colosimo's neighborhood. She noted the repairs and updates needed to the property to bring it to a sellable condition, and estimated a cost to cure of \$6,000. Adamson reported that comparable properties in the neighborhood sold for \$145,000 to \$200,000 in the past twelve months. She first identified nine sales in the area, and of these used five split-foyer dwellings all located within two miles of the subject property. Unadjusted sale prices per square foot ranged from \$103.92 to \$147.92 with a median of \$127.41 per square foot. Adamson made adjustments for age, gross living area, garage style, basement size and finish, and other amenities.

Adamson developed both the sales and cost approaches to valuation. She estimated a value of \$167,000 using Marshall Swift Residential Cost Handbook. Adamson estimated a \$165,000 value using the sales approach noting that, "the sales comparison approach to value is the best indicator of market value due to market reaction." She gave lesser consideration to the cost approach due to the age and depreciation of the subject property. Her final estimate of value was \$165,000 as of January 1, 2009.

Reviewing all the evidence, we find that substantial evidence supports Colosimo's contention that his property was assessed for more than authorized by law as of January 1, 2009. Further, we find Adamson's appraisal is the most credible evidence of the fair market value of the Colosimo property as of January 1, 2009.

Conclusion of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal

Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are also to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).

In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). We find the Adamson opinion of value supports the claim that the property is over-assessed. Further, we rely on her appraisal as the most credible evidence of the subject property's fair market value as of the assessment date.

Viewing the evidence as a whole, we determine that substantial evidence supports Colosimo's claim of over-assessment as of January 1, 2009. We, therefore, modify the Colosimo property assessment as determined by the Board of Review. The Appeal Board determines that the property assessment value as of January 1, 2009, is \$165,000, representing \$26,200 in land value and \$138,800 in dwelling value.

THE APPEAL BOARD ORDERS that the January 1, 2009, assessment as determined by the Polk County Board of Review is modified to \$165,000, representing \$26,200 in land value and \$138,800 in dwelling value.

Dated this 19th day of February 2010.

Jacqueline Rypma
Jacqueline Rypma, Presiding Officer

Richard Stradley
Richard Stradley, Board Member

Karen Oberman
Karen Oberman, Board Chair

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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>2.19</u> , 201 <u>0</u>	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	<u>[Signature]</u>